



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

January 11, 2016

Mr. John Carr  
780 North Union Street  
Hobart, Indiana 46342

*Re: Formal Complaint 15-FC-324; Alleged Violation of the Access to Public Records Act by the South Central Community School Corporation*

Dear Mr. Carr:

This advisory opinion is in response to your formal complaint alleging the South Central Community School Corporation ("School") and Ms. Linda Wiltfong, Superintendent violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The School has responded to your complaint via Mr. Nicholas Otis, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 9, 2015.

## **BACKGROUND**

Your complaint dated December 9, 2015 alleges the South Central Community School Corporation violated the Access to Public Records Act by failing to provide the requested documents.

On November 9, 2015 you requested documents related to a school construction project. You specifically wished for documents which show all subcontractors and employees have met their apprenticeship requirements. The contractor has submitted verification, ostensibly to the satisfaction of the School, which has been disclosed to you. You seek further proof of this verification.

On December 22, 2015 the School responded. Counsel for the school corporation contends the compliance records sought are not public records. Counsel relies on *Informal Opinion 08-INF-16*, which held that compliance information related to criminal history were not public records as the records were created by the contractor and not maintained by the school.

## **ANALYSIS**

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The South Central Community School Corporation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Ind. Code § 5-14-3-2(o) defines public record as “any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained or filed by or with a public agency.”

There are indeed instances when a third-party contractor or vendor can be in the shoes of a public agency as a ‘state actor’ and be the custodian of public records. The *Informal Opinion of the Public Access Counselor 08-INF-26*, referenced by the respondent, speaks to such an instance enumerated by the courts in *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). The operative consideration in these cases is whether the records were created on behalf of the government contract.

In the present case, the apprenticeship requirement was a condition precedent to the contract, but was not completed pursuant to the contract itself. Employees ostensibly enrolled in the apprenticeship program independent of the contract with the School Corporation and not immediately germane to the work performed under the service agreement.

The ruling in the *Knightstown* case ensured public agencies could not hide behind a contract to shield public records from disclosure which would otherwise be subject to public inspection. Employee records and personnel files of a private corporation are not the type of records contemplated by the *Knightstown* Court or any other public access law. This includes personnel accreditation and other associated programs or training. While the RFP required verification from the contractor that its employees satisfied the requirement, the RFP did not require disclosure of the individual employee records. I am not aware the Indiana Code similarly requires proof independent of verification or attestation by the contractor.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the South Central Community School Corporation has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish extending from the bottom left.

Luke H. Britt

Public Access Counselor

Cc: Mr. Nicholas Otis, Esq.